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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,293	11/17/2003	Stephen P. Massia	049954-004100	8809
22204	7590	12/23/2008		
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER NIEBAUER, RONALD T	
			ART UNIT 1654	PAPER NUMBER
			MAIL DATE 12/23/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/716,293

**Applicant(s)**

MASSIA ET AL.

**Examiner**

RONALD T. NIEBAUER

**Art Unit**

1654

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1 and 102-105.  
Claim(s) withdrawn from consideration: 10-20,25-26,31-46,101.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

/Ronald T Niebauer/  
Examiner, Art Unit 1654

/Anish Gupta/  
Primary Examiner, Art Unit 1654

Continuation of 13. Other: The claims as amended raise new issues that would require further consideration and/or search and the claims raise the issue of new matter. Claim 1 has been amended such that SEQ ID NO:124 has been deleted from element b of the claim and claim 1a has been amended such that the hydrophilic polymer is non-proteinaceous. A search of a non-proteinaceous hydrophilic polymer is distinct from a search of a hydrophilic polymer. In other words, the addition of the term 'non-proteinaceous' necessitates a new search. With respect to the issue of new matter, applicants state that no new matter is introduced in these amendments. Claim 1 has been amended to recite 'a non-proteinaceous hydrophilic polymer'. The instant specification is void of support for the word 'non-proteinaceous'. Further, there is not express, implicit, or inherent support for instant claim 1. The original specification does recite 'hydrophilic polymer' (section 0019). However, a hydrophilic polymer is not necessarily non-proteinaceous. The specification does recite that the polymer can be a polysaccharide, for example (section 0025). Although a polysaccharide may be non-proteinaceous, the subgenus of non-proteinaceous includes many other possible compounds such as DNA, RNA, small molecules, etc. There is nothing in the specification to lead one to the specific subgenus of claim 1a. In other words, there are no blaze marks directing the skilled artisan to the specifically claimed genus. As such, one would not conclude that the instant specification provides support for all of the instant claims. In accord with section 714.13 III of the MPEP the proposed amendments will not be entered. Since the amendment has not been entered, the previous rejections remain of record. It is noted that applicants argue that a provisional application was filed and should be considered with respect to priority. In accord with section 601 I of the MPEP the applicant data sheet (ADS) controls with respect to priority information. In the instant case, the originally filed ADS does claim priority to a provisional application, while the oath does not. Since the originally filed ADS controls, such priority information will be considered as appropriate in future correspondence.